



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 13-00948
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

12/04/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations). Eligibility for access to classified information is denied.

Statement of the Case

On April 24 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's security clearance. On June 29, 2014, Applicant answered the SOR and requested a hearing. This case was assigned to me on August 18, 2014. On September

11, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for September 25, 2014.¹ The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6. GE 1 and 3 were admitted into evidence without objection. Applicant's objections to GE 4 (records of judgments), 5 (credit report), and 6 (credit report) were overruled. After questioning Applicant about GE 2, Department Counsel withdrew GE 2 (summary of an Office of Personnel Management interview). Applicant testified and offered Applicant Exhibits (AE) A through E, which were admitted into evidence without objection. After the hearing, Applicant submitted documents that were marked as AE F through J and admitted into evidence without objection. The transcript (Tr.) of the hearing was received on October 3, 2014.

Findings of Fact

Applicant is a 56-year-old software engineer. He graduated from high school in 1976, earned three bachelor's degrees in 1984 and 1985, and has completed all of the classes for a master's degree but has not yet been awarded that degree. He has not served in the military. He has been married and divorced four times. His latest marriage ended in 2008. He has five children, ages 12, 13, 19, 31, and 33. He has held a security clearance for a number of years without incident.²

The SOR alleged that Applicant had eight delinquent debts totaling \$24,358 (SOR ¶¶ 1.a-1.h). In his Answer to the SOR, Applicant admitted one allegation (SOR ¶ 1.d) and denied the others. His admission is incorporated as a finding of fact.³

This is a reapplication for a security clearance. Applicant was previously denied a security clearance following a hearing (ISCR Case No. 09-01321, dated November 23, 2009). The previous SOR alleged 26 delinquent debts under Guideline F, totaling about \$79,000. The majority of those debts became delinquent between 2002 and 2004. The Administrative Judge traced Applicant's financial problems to him being "forced to quit" a good-paying job in 2002 after his manager found out that he was doing contract work for a competitor company, creating a conflict of interest. Although not alleged in the SOR, the Administrative Judge noted Applicant had been \$38,140 in arrears in child support payments in January 2007 for which his wages were garnished and, by August 2009, had reduced the arrearages to \$11,196. In that case, Applicant entered into a debt management agreement with a credit counseling service following receipt of financial interrogatories. He provided no proof of payments under that agreement. The Administrative Judge concluded that Applicant partially resolved two of the delinquent

¹ At the hearing, Applicant waived the 15-day notice requirement. See Tr. 12-13.

² Tr. 6-8, 18, 40-41; GE 1.

³ Applicant's Answer to the SOR.

debts, but failed to establish a track record of financial responsibility and made no effective progress in resolving his debts.⁴

Applicant stated that, after the denial of his security clearance request in 2009, he has not had stable employment. He testified that he was unemployed four times since 2009 and applied for unemployment compensation for each of those periods. His Electronic Questionnaire for Investigations Processing (e-QIP) reflected that he was unemployed from May 2012 to July 2012 and from August 2013 to November 2013, but otherwise indicated continuous employment since 2009 with a number of employers. He indicated that he had difficulty finding a permanent job without a security clearance. He noted that he worked temporary jobs, including six-month contracts. At the hearing, he indicated that he was unemployed and had stopped working about two weeks earlier.⁵

SOR ¶ 1.a – judgment for \$2,826. This was an apartment lease that Applicant signed when he was living with his ex-wife and their children. During the lease, Applicant moved out of the apartment, while his then-wife and children continued to live there. He believed the judgment may have been for cleaning service expenses or damage to the apartment and considered those charges his ex-wife's responsibility. The judgment was filed against him in February 2008. He provided no proof of payments toward this debt, but indicated that he would pay it. He also stated that he disputed the debt before the judgment; however, he presented no documentation of the dispute.⁶

SOR ¶ 1.b – collection account for \$16,570. This was a child support arrearage for Applicant's two youngest children. His child support payments for those children are about \$1,259 per month. He presented a payment record that showed he was making inconsistent child support payments in 2013. Starting in December 2013, his wages were garnished for those payments. Additionally, his income tax refunds for tax years 2012 (\$1,885) and 2013 (\$4,192) were withheld for this debt. He testified that he has not received an income tax refund "for a while." He reunited with his ex-wife and two children for a year and a half in 2011 and 2012. He continued to make child support payments while they were together and later petitioned the court to credit him for those payments. He testified that a judge reduced his monthly child support payments, but also extended those payments until his two children reached the age of 19. He did not provide any documentation supporting the claimed modification, but did submit a credit report dated September 23, 2014, reflecting this child support arrearage was \$9,217.⁷

⁴ GE 3.

⁵ Tr. 18, 28, 34, 38, 41-42, 45-46, 51-56, 65; GE 1. Applicant also testified that he was unemployed for eight months following the denial of his security clearance in 2009, but that period is not reflected in his e-QIP. See Tr. 45-46, 65; GE 1.

⁶ Tr. 34-36, 47-50, 71-72; GE 4, 5, 6.

⁷ Tr. 37-38, 43-44, 60-61, 69-73; AE C, I, J; Applicant's Answer to the SOR.

SOR ¶ 1.c – collection account for \$4,076. This was a child support arrearage for Applicant's third youngest child. This account was from a different state than the account listed in SOR ¶ 1.b, above. He indicated that he got behind on these child support payments when he was laid off from a job in 1996. In his Answer to the SOR, he provided a court record dated April 11, 2014, reflecting the termination of the garnishment order for this debt. His credit report dated September 23, 2014, reflected this debt was paid and closed.⁸

SOR ¶ 1.d – charged-off account for \$423. This was a credit card account that had a date of first delinquency/date of last activity of December 2007. Applicant stated that he tried to contact the creditor, but could not reach anyone to pay. He also indicated that he received a letter from the creditor about three weeks before the hearing that offered a settlement, but he had not yet responded to the letter at the time of the hearing.⁹

SOR ¶ 1.e – collection account for \$155. This was a cable television account that was placed for collection in July 2008. In Applicant's Answer to the SOR, he stated that he paid this debt. No documentation was presented to show this debt was paid or otherwise resolved. It did not appear on credit reports that Applicant presented, but appeared on credit reports from a different credit reporting bureau that Department Counsel presented. Insufficient evidence was presented to conclude this debt was resolved.¹⁰

SOR ¶¶ 1.f and 1.g – collection accounts for \$123 and \$100, respectively. These were medical debts that were placed for collection in June 2009 and June 2012. Applicant testified that he paid these debts. He provided no documentation showing the payments. These debts did not appear on credit reports that Applicant presented, but appeared on credit reports from a different credit reporting bureau that Department Counsel presented. Insufficient evidence was presented to conclude these debts were resolved.¹¹

SOR ¶ 1.h – collection account for \$85. This was for an unpaid parking ticket. It is unknown when this account became delinquent, but it was opened as a collection account in December 2009. In Applicant's reapplication request, he provided a money order showing this debt was paid in July 2012.¹²

⁸ Tr. 36-37, 42-45, 68-71; AE C, I; Applicant's Answer to the SOR.

⁹ Tr. 50-51; GE 3, 5, 6.

¹⁰ Tr. 57-58; GE 5, 6; AE C; Applicant's Answer to the SOR.

¹¹ Tr. 58, 77-78; GE 5, 6; AE C; Applicant's Answer to the SOR.

¹² Tr. 78-79, 82-83; GE 3.

Applicant established an account with a credit repair company in July 2014. However, no documents were presented to show the efforts, if any, that company has taken to help resolve his financial problems. His credit reports reflect that he resolved six past-due debts that were not alleged in the SOR. The amounts of those delinquencies are unknown. His most recent credit report also reflected that he had nine current accounts.¹³

Applicant had a judgment entered against him for \$1,294 in October 2007 that was not alleged in the SOR. No evidence was presented to show this judgment was resolved. He stated that the judgment was his ex-wife's responsibility, but indicated that he would address it. His pay stub reflected two garnishments – one for child support in the amount of \$375 per week and another for \$200 per week. He initially indicated that the garnishment for \$200 was for repayment of unemployment compensation. This overpayment apparently occurred because he was receiving unemployment compensation in one state, obtained employment in another state, and did not immediately notify the former state of his re-employment. He did not know how much unemployment compensation he was required to pay back. He indicated that the garnishment was still in effect when he stopped working about two weeks before the hearing, but also stated the amount owed had been repaid. He further contradicted himself by stating that the \$200 garnishment was for child support payments and that he was still paying a little over \$100 per week for the overpayment of unemployment compensation. Based on his testimony, the basis for the \$200 garnishment was unclear.¹⁴

Applicant testified that he had about \$2,000 in bank accounts at the time of the hearing. He also said that 2014 was a tough year financially because of the added expenses of having his two youngest children with him over the summer.¹⁵

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v.*

¹³ AE A, C; Applicant's Answer to the SOR.

¹⁴ Tr. 54-57, 59-60; AE E, H.

¹⁵ Tr. 39, 54-57, 59-69, 73-77, 83-85; GE 4, 5, 6; AE E. Conduct not alleged in the SOR "may be considered (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular adjudicative guideline is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3 . . . ISCR Case No. 00-0633 at 3 (App. Bd. Oct 24, 2003)." ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006). Non-alleged conduct will only be considered for these limited purposes.

Egan, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts that he was unable or unwilling to satisfy over an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant was divorced in 2008. He also indicated that he had difficulty obtaining stable employment since 2009 because he did not have a security clearance. His divorce, unlike the prior denial of his security clearance, was a condition beyond his control. Under AG ¶ 20(b), an applicant must show not only that his financial problems were the result of a condition largely beyond his or her control, but also that he or she acted responsibly under the circumstances. Here, Applicant failed to show that he acted responsibly in addressing his delinquent debts in the intervening six years since his latest divorce. AG ¶ 20(b) partially applies.

Applicant has a history of financial problems. In his prior security clearance proceeding, the SOR alleged 26 delinquent debts totaling about \$79,000. In the present proceeding, the SOR alleged only eight delinquent debts totaling about \$24,000. His credit reports reflected that six non-alleged, past-due debts were paid. What action Applicant took to resolve the delinquent debts alleged in the first SOR is unknown. While Applicant is making progress in reducing his financial problems, those problems are ongoing, significant, and continue to cast doubt on his current reliability, trustworthiness, and good judgment. He provided proof that he voluntarily resolved one of the alleged debts (SOR ¶ 1.h), which was approximately \$100. One child support arrearage was resolved through garnishment. He was making inconsistent payments on the other child support arrearage in 2013 before his pay was again garnished. The biggest reduction in that remaining child support arrearage occurred when his 2013 income tax refund was withheld. No track record of payments was presented for the other debts. Based on the evidence, I cannot find that his financial problems are under control, are being resolved, and are unlikely to recur. AG ¶ 20(d) partially applies. AG ¶¶ 20(a) and 20(c) do not apply. He presented no documentation to show he has a legitimate basis for disputing any of the debts. AG ¶ 20(e) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c).

I considered the whole-person factors as well as the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. Despite the presence of some mitigation, the security concerns under Guideline F remain. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant failed to mitigate the financial considerations security concerns.

Formal Findings

Formal findings on the allegations set forth in the SOR are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a -1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d -1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge